



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 20, 1998

Ms. Jennifer D. Soldano  
Associate General Counsel  
Texas Department of Transportation  
125 E. 11th Street  
Austin, Texas 78701-2483

OR98-1701

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116644.

The Texas Department of Transportation (the "department") received a request for information pertaining to a particular complaint filed against a certain employee, including the entire investigation, reports, statements, findings, recommendations and corrective action taken. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.107, 552.111 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We now address your arguments concerning section 552.101, which excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test articulated under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Accordingly, we will consider your section 552.101 and section 552.102 claims together.

Section 552.101 excepts from public disclosure information coming within the common-law right to privacy. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly

objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigatory files at issue in *Ellen* contained individual witness and victim statements, an affidavit given by the individual accused of the misconduct in response to the allegations, and the conclusions of the board of inquiry that conducted the investigation. The court held that the names of witnesses and their detailed affidavits regarding allegations of sexual harassment was exactly the kind of information specifically excluded from disclosure under the privacy doctrine as described in *Industrial Foundation*. *Ellen*, 840 S.W.2d at 525. However, the court ordered the release of the affidavit of the person under investigation, in part because it ruled that he had waived any privacy interest he may have had in the information by publishing a detailed letter explaining his actions and state of mind at the time of his forced resignation. *Id.* The *Ellen* court also ordered the disclosure of the summary of the investigation with the identities of the victims and witnesses deleted from the documents.<sup>1</sup> *Id.*

We note that, in this situation, information that relates to the requestor, who is the alleged victim, may not be withheld from her on the basis of protecting her own privacy interests. *See* Gov't Code § 552.023(a). After reviewing the documents submitted to this office, we conclude that there is no one single document among these records that constitutes an adequate summary of the investigation and the final resolution of the complaint. Consequently the department must release all of the records pertaining to this investigation.

We next consider whether section 552.107(1) protects some of the submitted information. Section 552.107(1) excepts from disclosure communications that reveal client confidences or the attorney's legal opinion or advice. Open Records Decision Nos. 589 (1991) at 1, 574 (1990) at 3, 462 (1987) at 9-11. The records submitted to this office do not contain any information which falls within the attorney-client relationship as protected under section 552.107(1). Thus, the records at issue are not excepted from disclosure under section 552.107(1).

Section 552.111 excepts from disclosure interagency or intra-agency communications "consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body." Open Records Decision No. 615 (1993) at 5. The information at issue concerns routine personnel and administrative issues, not the department's policymaking functions. Thus, the information at issue is not excepted from disclosure under section 552.111.

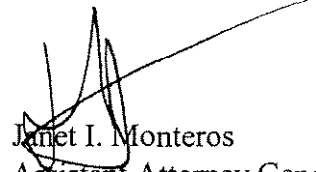
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<sup>1</sup>The court noted that the public interest in the matter was sufficiently served by disclosure of such documents and that in that particular instance "the public [did] not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements." *Ellen*, 840 S.W.2d at 525.

Although you assert section 552.117, our review of the documents did not reveal any information which contained home addresses, telephone numbers, and social security numbers of current or former employees of the department. If present, this information may be confidential under section 552.117 of the Government Code, and therefore, depending on the specific circumstances, may not be released. Section 552.117 excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or personal family members information of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information if a current or former employee or official requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

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Ref.: ID# 116644

Enclosures: Submitted documents